

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

ERIKA GUTIERREZ,)	CASE NO.: CI 22 - _____
)	
Plaintiff,)	
)	
vs.)	COMPLAINT
)	and JURY DEMAND
CIGNA HEALTH AND LIFE)	
INSURANCE COMPANY d/b/a CIGNA,)	
)	
Defendant.)	

Plaintiff, Erika Gutierrez, and for her causes of action and claims for relief against the Defendant, Cigna Health and Life Insurance Company d/b/a Cigna, states and alleges that at all time material hereto:

PARTIES

1. Plaintiff, Erika Gutierrez, is a resident of Omaha, Douglas County, Nebraska.

2. Defendant, CIGNA, is an insurance company doing business in the State of Nebraska, with its principal place of business located at 900 Cottage Grove Road Bloomfield, Connecticut.

3. All administrative prerequisites have been satisfied. Plaintiff has exhausted the internal appeals available to her pursuant to the terms of the policy.

JURISDICTION and VENUE

4. The District Court of Douglas County, Nebraska, has subject matter jurisdiction over this action pursuant to Neb. Rev. Stat. Section 24-302.

5. Pursuant to Neb. Rev. Stat. § 25-403.01, venue is proper in Douglas County, Nebraska, as the county where the transaction or some part of the transaction occurred out of which Plaintiffs' cause of action arose.

FACTUAL ALLEGATIONS

6. Plaintiff is the mother of Meisha Gutierrez, born January 18, 2014, for whom a life insurance policy which is the subject of this litigation was taken out for.

7. Meisha Gutierrez was hospitalized from December 12, 2019, through December 31, 2019, at Children's Hospital and Medical Center in Omaha, Nebraska.

8. On December 31, 2019, Meisha Gutierrez was discharged from the hospital to her home with her parents.

9. At this time she was considered under home care versus homebound because she was not restricted to the home.

10. On February 3, 2020, Meisha was readmitted to Children's Hospital and Medical Center ICU where she remained until she passed away on February 9, 2020.

11. On March 30, 2020, Defendant sent a letter to Plaintiff informing her that the insurance claim pursuant to the policy was being reviewed.

12. On July 17, 2020, Defendant sent a letter to Plaintiff informing her that the Group Term Dependent Life Insurance benefits for Meisha Gutierrez were not payable, claiming that "coverage would have become effective January 1, 2020, if she was not an inpatient in a hospital, hospice, rehabilitation or

convalescence center, custodial care facility, or confined to home under the care of a physician.”

13. On August 16, 2020, Plaintiff sent a letter to Defendant requesting an appeal of the denial made for Meisha.

14. Included with this request was a discharge summary prepared by Julianna Tullis, LCSW, MPA signed on July 29, 2020, as well as a letter from her primary doctor, Emilio A. Arispe, M.D., stating that Meisha was not confined to the home and signed August 12, 2020.

15. On September 22, 2020, Defendant sent a letter to Plaintiff informing her that the original decision to deny the claim for specific Group Term Dependent Life Insurance benefits under the policy had remain unchanged.

16. On February 24, 2021, Plaintiff filed a second appeal of the denial of her claim.

17. On June 28, 2021, Defendant sent Plaintiff a letter informing her that the prior denial had again been reaffirmed, at which point Plaintiff had exhausted all administrative levels of appeal and no further appeals would be considered.

COUNT I – BREACH OF CONTRACT

18. Plaintiff complied with all conditions precedent to Defendant’s performance under said contract by paying all sums due for the policy of insurance.

19. Defendant breached the contract described above by failing to pay Plaintiff the life insurance benefits entitled to her under the policy.

20. Defendant's breach of contract is material and in no way constitutes substantial performance under the terms of such contract.

COUNT II – BAD FAITH

21. Defendant's denial of Plaintiff's claim for life insurance benefits pursuant to the contract constitutes bad faith on behalf of the Defendant.

COUNT III – ATTORNEY'S FEES PURSUANT TO NEB. REV. STAT. § 44-359

22. The above-cited statute provides that "an action upon any type of insurance policy ... shall allow the Plaintiff a reasonable sum as an attorney's fee to the amount of his recovery, to be taxed as part of the costs."

23. This suit is an action upon an insurance policy, and Neb. Rev. Stat. § 44-359 applies.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendant, for general and special damages, costs of this action, interest as allowed by law, and for any other relief that the court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial of this matter in Douglas County District Court, Nebraska.

DATED this 28th day of January, 2022.

ERIKA GUTIERREZ, Plaintiff,

By: /s/ Christopher P. Welsh

Christopher P. Welsh - #22279

WELSH & WELSH, P.C., L.L.O.

9290 West Dodge Road

204 The Mark

Omaha, NE 68114

Phone: 402-384-8160

cwelsh@welsh-law.com

SERVICE RETURN

Douglas District Court
1701 Farnam
Omaha NE 68183

To:

Case ID: CI 22 643 Gutierrez v. Cigna Health and Life Ins.

Received this Summons on _____, I hereby certify that on

_____ at _____ o'clock __M. I served copies of the Summons
upon the party:

by _____

as required by Nebraska state law.

Service and return \$ _____

Copy _____

Mileage _____ miles

TOTAL \$ _____

Date: _____ BY: _____
(Sheriff or authorized person)

CERTIFIED MAIL PROOF OF SERVICE

Copies of the Summons were mailed by certified mail,
TO THE PARTY: Cigna Health and Life Ins. Co.

At the following address: c/o C T Corporation System

5601 South 59th Street

Omaha, NE 68516

on the 28th day of January 2022, as required by Nebraska state law.

/s/ Christopher P. Welsh

Postage \$ 6.33 Attorney for: Plaintiff

The return receipt for mailing to the party was signed on January 31, 2022

To: Cigna Health and Life Ins. Co.
c/o C T Corporation System
5601 South 59th Street
Lincoln, NE 68516

From: Christopher P Welsh
9290 West Dodge Road
204 The Mark
Omaha, NE 68114

ATTACH RETURN RECEIPT & RETURN TO COURT



February 1, 2022

Dear WALZ GROUP:

The following is in response to your request for proof of delivery on your item with the tracking number: **9314 8699 0430 0091 2957 09**.

Item Details

Status: Delivered, Individual Picked Up at Postal Facility
Status Date / Time: January 31, 2022, 09:38 a.m.
Location: LINCOLN, NE 68516
Postal Product: First-Class Mail®
Extra Services: Certified Mail™
 Return Receipt Electronic
Recipient Name: Cigna Health and Life Ins Co c o C T Corporati

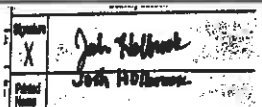
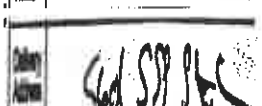
Shipment Details

Weight: 2.0oz

Destination Delivery Address

Street Address: 5601 S 59TH ST
City, State ZIP Code: LINCOLN, NE 68516-2306

Recipient Signature

Signature of Recipient:	
Address of Recipient:	

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

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Sincerely,
 United States Postal Service®
 475 L'Enfant Plaza SW
 Washington, D.C. 20260-0004

Certificate of Service

I hereby certify that on Friday, February 11, 2022 I provided a true and correct copy of the Return-Summons/Alias Summons to the following:

Cigna Health and Life Ins. Co. service method: No Service

Signature: /s/ Welsh,Christopher, (Bar Number: 22279)